



Department of Justice

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January 13, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Wheeler:

I am writing concerning the Petition for Rulemaking to Amend the Commission's Rules Governing Practices of Video Programming Vendors, RM 11728, filed by Mediacom. As Attorney General of Iowa, it has been my focus to advance the interests of consumers in Iowa by enforcing consumer protection laws, advocating competition which advances innovation, and encouraging meaningful regulation where necessary.

Mediacom has filed a Petition for Rulemaking, which has the potential to improve consumers' access to cable television programming by allowing for enhanced choices at a competitive price, and in the longer term, improve conditions for competition in broadband programming and distribution markets, particularly in rural states where, as you have recognized, cable is the only option for high speed broadband and there is no real competition with cable for broadband programming.¹

The problems outlined by the Mediacom Petition are real. The Petition seeks rulemaking to eliminate three practices currently utilized by the large programmers. The first problem is bundling. The large programmers which control a significant number of channels require cable providers to take all or most of its offering, and pay for it, despite the desire of the cable provider to take only the programming its customers actually want to watch, and further require that much or all of that programming be placed on a tier which every cable customer must have in its package. This practice, made possible by the leverage the programmer has over the cable provider, is accomplished either by making it

¹ Tom Wheeler, Remarks, FCC, The Facts and Future of Broadband Competition (Sept. 4, 2014), http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0904/DOC-329161A1.pdf.

too expensive not to buy the bundle of channels, or more simply by refusing to sell the desired programming without the bundle. This hurts consumers. It drives up the cost of the basic cable package. Programmers require many channels to be in the basic package, and all are paid for by the consumer, despite the fact that many are not desired. Second, when cable operators are required to take all channel offerings from the large programmers, fewer channels remain for innovative programs or other programming of interest from smaller programmers, or competing programming which might serve as a substitute for the more expensive offering.

The second problem is required tier placement. As suggested in the paragraph above, the programmers require that the bundled programming must be placed on the first or second "tier". Tiers are nothing more than program packages, the first tier being the package that is most purchased by customers. Through various ways, the programmers control the placement of programming, making it impossible for cable providers to offer *a la carte* selection.

One particularly troubling practice recently utilized has been interference with consumers' ability to access programming on the Internet. Examples which have been outlined in the public comments include some programmers blocking access to Internet programming to *broadband customers* (even if they were not cable customers) of the cable provider who chose not to take the bundled *cable* deal the programmer offered. See Comments of the American Cable Association, at 4. Another practice recently introduced is the (required) contractual disabling of innovative technological services, like "box free" DVR services which would allow a customer to store recorded programming on a provider's server, thus eliminating the need for a separate box in the home. Other services which are currently technologically available but are denied to customers by programmers' contracts are the ability to shift programming from one location to another, to record without commercials, and to transfer recorded programming from one location to another. These innovations are denied to cable operators, and thus to cable customers, simply because programmers do not want them available and have the power to coerce cable operators through threatened denial of programming.

The third problem for rural customers is the increased pricing to smaller rural consumers who are not served by the large distributors like Comcast or Time Warner Cable. Programmers give significant discounts to the largest distributors, leaving the smaller cable providers to make up the difference by paying more for the same programming. Customers of small operators, many in Iowa and other areas without large urban populations pay more for the same cable service.

There is another, perhaps more important issue involved here. In the longer term, these rules have the potential to make high speed broadband accessible to more Iowans. As I alluded to at the outset, and as you have recognized, cable systems currently hold the most hope for the delivery of high speed broadband in rural areas, some of which still do not even have reliable Internet access, let alone high speed service. This fact is an inconvenience for consumers in those areas but disastrous for small businesses which are

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increasingly required to depend upon electronic communication. Some businesses must have dependable high speed broadband in order to grow and compete in a national or international marketplace.

In order to accomplish this, small cable operators must have the financial ability to expand both geographically and in their technological offerings. They must be ubiquitous and fast. As some of the Commenters to the proposed rules have suggested, if large programmers continue to dominate smaller, sometimes local cable providers, it is unlikely that those operators will thrive. If there is no one in position to provide the necessary upgrade to broadband services in Iowa and rural areas, consumers and businesses will be seriously disadvantaged.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in dark ink, appearing to read "T. J. Miller", with a long horizontal line extending to the left.

Thomas J. Miller
Attorney General of Iowa